

Aug 22, 2017

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SEAN F. McAVOY, CLERK

JAN M. RENFROE,

Plaintiff,

v.

QUALITY LOAN SERVICE CORP.
OF WASHINGTON; BANK OF
AMERICA, N.A., successor by merger
to BAC Home Loans Servicing, LP,
f/k/a Countrywide Home Loans
Servicing, LP; CITIBANK, N.A., as
trustee of NRZ Pass-Through Trust VI;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
and BANK OF NEW YORK
MELLON, as trustee on behalf of the
Certificateholders of the CWHEQ Inc.,
CWHEQ, Revolving Home Equity
Loan Trust Series 2006-C,

Defendants.

No. 2:17-CV-0194-SMJ

ORDER GRANTING DEFENDANTS
BANK OF AMERICA, N.A. AND
THE BANK OF NEW YORK
MELLON'S, MOTION TO DISMISS

I. INTRODUCTION

A deed of trust is a security instrument in which legal title in real property is transferred to a third-party trustee who then holds it as security for a debt between the borrower and the lender. The deed of trust is said to "follow the note" so that the holder of the note is the beneficiary under the deed of trust. The

1 beneficiary under a deed of trust has the power to initiate a nonjudicial foreclosure
2 upon the borrower's default.

3 In 2005, Ms. Renfroe and her husband executed a deed of trust against their
4 home in Oroville, WA as security for a loan with Eagle Home Mortgage. The note
5 securing the deed subsequently changed possession several times. In 2014, Bank
6 of America—acting as trustee under the Deed of Trust—commenced a nonjudicial
7 foreclosure proceeding against Ms. Renfroe's Oroville home.

8 Ms. Renfroe filed this action in Okanogan Superior Court to halt the
9 foreclosure proceedings. Her complaint names multiple defendants and alleges a
10 host of errors with the foreclosure process. These allegations include that
11 defendants violated the Deed of Trust Act by failing to identify the true
12 beneficiaries in the foreclosure documents and engaged in unfair or deceptive
13 practices in violation of the Consumer Protection Act. Ms. Renfroe seeks
14 declaratory and injunctive relief as well as damages and quiet title.

15 Defendants Bank of America, N.A. (Bank of America) and The Bank of
16 New York Mellon, as trustee on behalf of the Certificateholders of the CWHEQ
17 Inc., CWHEQ, Revolving Home Equity Loan Trust Series 2006-C (New York
18 Mellon) (collectively, Defendants) move to dismiss each of Ms. Renfroe's claims
19 against them for failure to state a claim upon which relief can be granted. As
20 discussed below, Ms. Renfroe has not alleged facts sufficient to support her claims

1 against Defendants for declaratory relief, CPA violations, or quiet title.
2 Accordingly, the Court grants Defendants' motion to dismiss and dismisses claims
3 one, three and four of Plaintiff's complaint.¹

4 **II. BACKGROUND**

5 In 2016, Jan Renfroe brought an action in Okanogan Superior Court to
6 delay foreclosure proceedings initiated under a Deed of Trust. ECF. No. 9. The
7 Deed of Trust originated in 2005, when Ms. Renfroe and her then-husband Rand
8 Renfroe took out a loan with Eagle Home Mortgage, Inc. (Eagle Home). ECF No.
9 1-1 at 1. The Note was secured by a Deed of Trust against the Renfroes' home in
10 Oroville, Washington (the Oroville Property). ECF No. 5-2. The Deed of Trust
11 identifies the Renfroes as borrowers, Eagle Home as the lender, and lists
12 Mortgage Electronic Registration Systems, Inc. (MERS) as beneficiary and
13 lender's nominee. *Id.* at 1-2.

14 Ms. Renfroe fell behind on her home loan payments in 2011, triggering the
15 beneficiary's right to direct a non-judicial foreclosure sale under the Deed of
16 Trust. ECF No. 1-1 at 4. By 2011, however, neither MERS nor Eagle Home
17 retained an interest in the Note or Deed of Trust. Sometime after origination, the
18 Note was sold to the Federal National Mortgage Association ("Fannie Mae"). ECF

19 ¹ Defendants Bank of America and New York Mellon are not implicated in Ms.
20 Renfroe's second claim for equitable relief against defendants Quality Loan
Services and Citibank as Trustee for NRZ Pass Through Trust VI. ECF No. 1-1 at
6.

1 No. 1-1 at 5. In 2014, Bank of America sent Ms. Renfroe a Notice of Default. *Id.*
2 The Notice identified Fannie Mae as the debt owner and Bank of America as the
3 loan servicer. *Id.* In 2015, Bank of America appointed Quality Loan Service Corp.
4 of Washington (Quality) to serve as successor trustee and continue the
5 foreclosure. ECF No. 5-4.

6 In December of 2016, Quality issued a Notice of Trustee's Sale. ECF No.
7 5-7. By this time, however, the Note had again changed hands. After Bank of
8 America issued the Notice of Default, the Note was sold to Citibank as Trustee for
9 NRZ Pass-Through Trust VI (Citibank). *See id.* Nationstar Mortgage, LLC
10 (Nationstar) served as Citibank's servicing agent and Quality remained as trustee.
11 *Id.* The 2016 Notice of Trustee's Sale identified Quality as the trustee under the
12 Deed of Trust and Citibank as the beneficiary. *Id.*

13 Before the auction date set in the Notice of Trustee's Sale, Ms. Renfroe
14 brought an action in state court seeking declaratory relief, an injunction stopping
15 the foreclosure sale, and quiet title. ECF No. 1-1. Defendants removed the action
16 to this Court. ECF No. 1. Defendants Bank of America and New York Mellon
17 now move for dismissal under Federal Rule of Civil Procedure 12(b)(6). ECF No.
18 7. Defendants also request this Court take judicial notice of several public records
19 so that the Court may consider them in conjunction with Defendants' motion to
20 dismiss. ECF No. 8.

III. JUDICIAL NOTICE

Defendants request this Court take judicial notice of the following: Notice of Trustee's Sale (ECF No. 8-1), Assignment of Deed of Trust (ECF No. 8-2), Assignment of Deed of Trust (ECF No. 8-3), Assignment of Deed of Trust (ECF No. 8-4), Deed of Trust (ECF No. 8-5), Deed of Trust (ECF No. 8-6), and Declaration of Jan M. Renfroe in Support of Motion to Restrain Sheriff's Sale and Obtain Restraining Order, filed in *Renfroe v. Quality Loan Service Corp. of Washington et al.*, Case No. 17-2-00156-4, Okanogan County Superior Court (ECF No. 8-7).

Federal Rule of Evidence Rule 201 permits courts to take judicial notice of adjudicative facts. The Court may take judicial notice of a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's jurisdiction or (2) can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned. Fed. R. Evid. 201. The Court may take judicial notice of publicly recorded documents. *Id.*

Because they are publicly recorded documents, judicial notice is proper as to all of Defendants' requested documents (ECF Nos. 8-1 through 8-6) except the Declaration of Jan M. Renfroe (ECF No. 8-7). Ms. Renfroe's declaration was filed in a separate, though related, action before a different court. ECF No. 8-7. The assertions contained therein are neither generally known within this jurisdiction

1 nor readily subject to indisputable verification. *Id.* This Court therefore declines to
2 notice the assertions contained in Ms. Renfroe's declaration, ECF No. 8-7.

3 **IV. MOTION TO DISMISS**

4 **A. Motion to Dismiss Standard**

5 A claim may be dismissed pursuant to Rule 12(b)(6) either for lack of a
6 cognizable legal theory or failure to allege sufficient facts to support a cognizable
7 legal theory. *Taylor v. Yee*, 780 F.3d 928, 935 (9th Cir. 2015). “Threadbare
8 recitals of the elements of a cause of action, supported by mere conclusory
9 statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To
10 survive a motion to dismiss under Rule 12(b)(6), a complaint must allege “enough
11 facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v.*
12 *Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face when “the
13 plaintiff pleads factual content that allows the court to draw the reasonable
14 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S.
15 at 678.

16 Rule 12(b) states that if, on a motion to dismiss for failure to state a claim
17 upon which relief can be granted, matters outside the pleadings are presented and
18 not excluded by the court, the motion shall be treated as one for summary
19 judgment and disposed of as provided in Rule 56. On a motion to dismiss,
20 however, a court may take judicial notice of facts outside the pleadings. *See Sears*,

1 *Roebuck & Co. v. Metro. Engravers, Ltd.*, 245 F.2d 67, 70 (9th Cir. 1956); 5 C.
2 Wright & A. Miller, *Federal Practice & Procedure*, § 1363 at 659–60 (1969).
3 Therefore, on a motion to dismiss a court may properly look beyond the complaint
4 to matters of public record and doing so does not convert a Rule 12(b)(6) motion
5 to one for summary judgment. *See Mack v. S. Bay Beer Distrib., Inc.*, 798 F.2d
6 1279, 1282 (9th Cir. 1986) *abrogated on other grounds by* *Astoria Fed. Sav. &*
7 *Loan Ass'n v. Solimino*, 501 U.S. 104 (1991).

8 **B. Ms. Renfroe's declaratory relief claim fails against Defendants because
9 Defendants Are Not Foreclosing on the Oroville Property**

10 Ms. Renfroe first seeks a declaration that the DTA requires parties to
11 correctly identify the parties seeking foreclosure in a nonjudicial foreclosure
12 action. ECF No. 1-1 at 6. Neither Bank of America nor Mellon Hill are pursuing
13 foreclosure of the Oroville Property. Ms. Renfroe acknowledges that Bank of
14 America serviced Fannie Mae's loan only until the loan servicing was transferred
15 to Nationstar in 2016. ECF No. 1-1 at 8. Accordingly, there is no basis for
16 declaratory judgment against Bank of America or Mellon Hill and the claim must
17 be dismissed against these defendants.

18 **C. Ms. Renfroe fails to establish a CPA or DTA violation by Citibank and
19 fails to allege a CPA or DTA violation by New York Mellon**

20 Ms. Renfroe's third cause of action alleges defendants violated
Washington's Consumer Protection Act (CPA), Wash. Rev. Code (RCW) § 19.86,

1 by misrepresenting the true holder of the Note, in violation of the DTA. ECF No.
2 1-1 at 7. To establish a *prima facie* private CPA claim the plaintiff must allege (1)
3 an unfair or deceptive act or practice; (2) that occurs in trade or commerce; (3) an
4 impact on the public interest; (4) injury to the plaintiff in his or her business or
5 property; and (5) a causal link between the unfair or deceptive act and the injury
6 suffered. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d
7 531, 533 (1986).

8 Failure to comply with the requirements for issuing a notice of default
9 under Washington's DTA is a *per se* unfair or deceptive practice. *See* Wash. Rev.
10 Code § 61.24.135. Ms. Renfroe alleges Bank of America failed to identify the true
11 parties seeking foreclosure in the Notice of Default. Specific to Bank of America,
12 Ms. Renfroe alleges that the Notice of Default did not identify the beneficiary or
13 trustee. ECF No. 1-1 at 7. However, the Notice of Default and recorded
14 assignments of the Deed of Trust indicate Bank of America identified the
15 appropriate parties in its Notice of Default. *See* ECF No. 8-2 (Bank of America as
16 beneficiary assigning interest to Citibank on April 1, 2016, after the 2014 Notice
17 of Default identifying Bank of America was issued).

18 Ms. Renfroe's claim regarding New York Mellon fails as a matter of law.
19 Ms. Renfroe's complaint is nearly silent regarding New York Mellon. It states
20 only that New York Mellon is a "nominal defendant who has an interest in the

1 Home.” ECF No. 1-1 at 2. Ms. Renfroe alleges no facts to support any element of
2 a CPA claim against New York Mellon. Accordingly, the CPA claim against New
3 York Mellon is dismissed.

4

**D. Ms. Renfroe’s quiet title claim fails because she has not alleged that she
5 has paid (or offered to pay) the outstanding balance of the Note secured
6 by the Oroville Property**

7 Ms. Renfroe’s fourth claim seeks quiet title to the Oroville Property and to
8 bar any of the named defendants from asserting any adverse right to the Oroville
9 Property. ECF No. 1-1 at 10. Defendants argue that they are inappropriate
10 defendants to the quiet title action because “Defendants do not assert title to the
11 Property, but rather only [New York Mellon] asserts a security interest” EFC
12 No. 7 at 12. This argument is flawed because an action to quiet title is appropriate
13 whenever a plaintiff with an interest in property seeks a determination of title. *See,*
14 *e.g., Bavand v. OneWest Bank, F.S.B.,* 309 P.3d 636, 649 (2013) (acknowledging
15 quiet title as an appropriate action to extinguish a lien pursuant to a deed of trust).
16 However, the Court nevertheless grants Defendants’ motion to dismiss on this
17 claim because Ms. Renfroe fails to allege sufficient facts to maintain a quiet title
18 action.

19 Under Washington law, a borrower must first fully satisfy (or be able to
20 satisfy) outstanding debt to maintain a quiet title action. *See McIndoe v.*

JPMorgan Chase Bank, N.A., 542 F. App’x 606, 607 (9th Cir. 2013) (citing *Littlejohn v. Miller*, 31 P. 758, 759 (Wash. 1892) (mortgagor who had “not . . . at any time offered to pay the balance of said purchase price, and to satisfy said mortgage debts” cannot maintain quiet title action)). Ms. Renfroe admits she stopped making payments on the obligation secured by the Oroville Property. ECF No. 1-1 at 4. She also acknowledges that she lacks the funds to repay the loan principal or bring the loan current. *Id.* On these grounds, Ms. Renfroe’s claim for quiet title fails as a matter of law and dismissal is appropriate as to both defendants.

V. CONCLUSION

For the reasons discussed, **IT IS HEREBY ORDERED:**

1. Defendants' Request for Judicial Notice, ECF No. 8, is Granted in part and Denied in part as follows:

A. Defendant's request for judicial notice as to Notice of Trustee's Sale, dated December 21, 2016, ECF No. 8-1, is **GRANTED**.

B. Defendant's request for judicial notice as to Assignment of Deed of Trust dated April 1, 2016, ECF No. 8-2, is **GRANTED.**

C. Defendant's request for judicial notice as to Assignment of Deed of Trust dated June 22, 2012, ECF No. 8-3, is **GRANTED.**

1 **D.** Defendant's request for judicial notice as to Assignment of
2 Deed of Trust dated May 10, 2011, ECF No. 8-4, is
3 **GRANTED.**

4 **E.** Defendant's request for judicial notice as to Deed of Trust
5 dated February 23, 2006, ECF No. 8-5, is **GRANTED.**

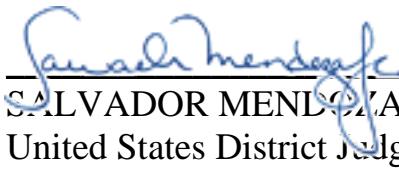
6 **F.** Defendant's request for judicial notice as to Deed of Trust
7 dated November 17, 2005, ECF No. 8-6, is **GRANTED.**

8 **G.** Defendant's request for judicial notice as to Declaration of Jan
9 M. Renfroe in Support of Motion to Restrain Sheriff's Sale and
10 Obtain Restraining Order, filed in *Renfroe v. Quality Loan*
11 *Service Corp. of Washington et al.*, Case No. 17-2-00156-4, in
12 Okanogan County Superior Court, ECF No. 8-7, is **DENIED.**

13 **2.** Defendants' Motion to Dismiss Plaintiff's Complaint for Failure to
14 State a Claim, **ECF No. 7**, is **GRANTED.**

15 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order
16 and provide copies to all counsel.

17 **DATED** this 22nd day of August 2017.

18 
19 _____
20 **SALVADOR MENDEZA, JR.**
21 United States District Judge